No. _____

In the Supreme Court of the United States

WILLIAM BRUCE JUSTICE,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

APPENDIX

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	FOR THE ELEVENTH JUDICIAL CIRCUIT
)	
William Bruce Justice,)	C.A. No. 2014-CP-32-0698
S.C.D.C. No. 084810,)	
)	
Applicant,)	
)	
v.)	**ORDER OF DISMISSAL**
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 26, 2014. Respondent made its return on May 29, 2015. Respondent moved to dismiss the application, and a hearing on that motion was heard on April 21, 2016, before the Honorable Perry Gravely. After hearing arguments from both Applicant and Respondent, Judge Gravely denied the motion to dismiss. Applicant then moved for discovery of the Department of Probation, Parole, and Pardon (DPPP) records, and after hearing argument from both Applicant, Respondent, and General Counsel of DPPP, Judge Miller issued an order on September 7, 2016, granting Applicant's motion for discovery in part.

After the records were produced to the parties, an evidentiary hearing was held on February 1, 2017, at the Lexington County Courthouse. Applicant was present and represented by Anna (Good) Browder, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and Agent Niquita M. Cook, Applicant's parole office, testified at the hearing. The Court had before it Applicant's parole records; the Lexington County Clerk of Court

records; the South Carolina Department of Probation, Parole, and Pardon records; the PCR application; the amended application; and the Return.

PROCEDURAL HISTORY

Applicant is confined at the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the at the February 1989 term of the Lexington County Grand Jury for four counts of Burglary Second Degree, two counts of grand larceny, and two county of petit larceny. He was represented by Frederick I. Hall, III, Esquire. On June 28, 1989, Applicant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Marion H. Kinon to sixty years imprisonment on the burglary charges, twenty years on the grand larceny charges and one month on each petit larceny charge. All sentences were ordered to run consecutively.

A timely Notice of Intent to Appeal was served and filed. On February 7, 1990, Assistant Appellate Defender Franklin W. Draper filed a Brief of Appellant on Applicant's behalf. Applicant raised the following ground for relief on

direct appeal:

1. Did the trial court err failing to suppress the evidence seized without a warrant or appellant's consent from appellant's motel room?
2. Did appellant's poor health due to heroin withdrawal deprive him of the ability to make a knowing and voluntary statement?
3. Was it proper to impeach appellant with a conviction that did not involve moral turpitude?
4. Did the trial court err in admitting a surveillance tape with an unidentified individual portrayed?

The state filed a Brief of Respondent on March 98, 1990 App. pp. 323-46; and Applicant filed a Reply Brief of Appellant on March 19, 1990. The South Carolina Supreme Court affirmed

Applicant's convictions and sentence in an unpublished opinion filed on July 16, 1991. State v. William Bruce Justice. 91-MO-200 (S.C.S.Ct, filed July 16, 1991.)

3:89-1232-OJ

Prior to the South Carolina Supreme Court's decision affirming his convictions, Applicant filed a pro se Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on May 15, 1989. Justice v. Bost, et al., 3:89-1232-OJ. He raised the following grounds for relief in his 1989 Petition:

1. Violation of constitutional right by illegal search and seizure.
   Police using threats and coercion on "non-residence" entered the residence of the Applicant without a proper search warrant, without permission or knowledge of the Applicant, and illegally and unconstitutionally did seize personal property of the Applicant without any form of a properly executed warrant.
2. Evidence obtained pursuant to unlawful arrest.
   Applicant was placed under illegal arrest following the illegal search and seizure and is still being held in illegal confinement since January 3, 1989, without ever being afforded a grand jury indictment on the charges.
3. Denied access to state court system to attack illegal and unconstitutional confinement.
   Court of General Sessions refused to adhere to state statute and hear the writ of habeas corpus submitted within the time limits set forth by statute thereby denying the Applicant access to the court or right to appeal to a higher court any decision rendered.

After Respondents had filed a Motion for Summary Judgment and a Supplemental Motion for Summary Judgment, Magistrate Judge Carr filed a Report and Recommendation on November 28, 1989, in which he recommended dismissal of the 1989 Petition without prejudice because Applicant had not exhausted available state court remedies. The Honorable Matthew J. Perry filed an Order on January 22, 1990 granting the Respondent's motion for summary

judgment and dismissing the 1989 Petition without prejudice. Judgment was entered in accordance with this Order of January 24, 1990.

August 18, 1992 PCR

Applicant subsequently filed an Application for Post-Conviction Relief (PCR) on August 18, 1992. He raised the following grounds for relief in his PCR Application:

1. Ineffective assistance of counsel.
2. Applicant was denied his Fourth Amendment right because of an illegal search and seizure.
3. Abuse of discretionary powers of the trial judge.
4. Denied a fair trial.
5. Ineffective assistance of appellate counsel.
6. Unconstitutional sentence.

The State filed a Return dated October 8, 1992. The Honorable Daniel E. Martin, Sr., held a hearing into the matter on June 7, 1995 at the Lexington County Courthouse. Applicant was present at the hearing and John R. Rakowsky represented him. Assistant Attorney General Allen Bullard represented the State. Prior to the start of the hearing, Judge Martin questioned Applicant regarding whether Applicant desired to make any amendments to the PCR Application. Collateral counsel made a motion to amend the Application to include the following additional allegations of ineffective assistance of counsel:

1. Counsel failed to challenge the Applicant's oral confession to law enforcement.
2. Counsel failed to subpoena a jacket and shoes to present as evidence.
3. Counsel did not request a charge for Receiving Stolen Goods.
4. Counsel did not ask the Court to impose concurrent sentences.
5. Counsel failed to subpoena additional witnesses.
6. Counsel did not object to introduction of prior escape charge for impeachment purposes.
7. Counsel didn't move for a directed verdict on the Grand Larceny charge on Indictment 89-GS-32-325. The Applicant was charged with stealing six shears but the State only produced two at trial.

Respondent did not object to amendment of the Application, and Judge Martin granted the motion to amend. Also, prior to the commencement of the hearing, Applicant explicitly withdrew all allegations of ineffective assistance of appellate counsel Frank Draper, Esquire, and any allegation against Ms. Kathy Evatt, Esquire.

Applicant testified in his own behalf at the hearing. Testifying on behalf of the State was Frederick I. Hall, III, Esquire. On July 19, 1995, Judge Martin signed an Order of Dismissal, in which he denied relief and dismissed the Application with prejudice.

A timely Notice of Appeal was served and filed. On February 1, 1996, Assistant Appellate Defender Lesley M. Coggiola filed a Petition for Writ of Certiorari on Applicant's behalf, in the South Carolina Supreme Court. Applicant raised the following ground for relief in the certiorari petition:

> Did the trial judge err in finding that Applicant received effective assistance of counsel when counsel failed to subpoena a jacket and a pair of shoes taken from his motel room by the officers who conducted a search and were different from the jacket and shoes worn by an individual who appeared on videotape the prosecution played for the jury?

The State filed a Return to Petition for Writ of Certiorari on March 11, 1996. The South Carolina Supreme Court denied certiorari on June 19, 1996 and the Remittitur was sent to the Lexington County Clerk of Court on July 8, 1996.

2:03-2281-10AJ

Applicant subsequently filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina on July 10, 2003, raising the following grounds for relief, verbatim:

> Convicted obtained by use of Evidence Obtained Pursuant to an Unconstitutional Arrest. Search and Seizure.

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> The Petitioner herewith and herein reasserts as his First Grounds in the petition for Writ of Habeas Corpus his Number #3 Grounds, verbatim, raised for ineffective assistance of counsel in his application for post conviction relief, which read as follows:
>
> The applicant was denied his rights protected under the Fourth Amendment of the United States Constitution by an illegal search seizure [sic] and during the suppression hearing the applicant was denied his rights protected under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution by ineffective assistance of counsel, denial of the process of law, denial of equal protection of laws, abuse of discretionary powers by the trial court judge.

Respondent filed a motion for summary judgment on September 17, 2003. On September 25, 2003, Applicant was provided a copy of Respondent's order as well as a Roseboro order. On November 3, 2003, Applicant filed an affidavit and reply to Respondent's motion. On December 23, 2003, United States Magistrate Judge Robert S. Carr issued a Report and Recommendation, recommending Respondent's motion for summary judgment be granted. Applicant submitted objections to the Report and Recommendation. On February 4, 2004, Senior United States District Judge Matthew J. Perry, Jr., issued an Order approving the Report and Recommendation and dismissing Applicant's action.

Parole Revocation

On or about May 2, 2012, Applicant was granted parole by the South Carolina Probation, Parole, and Pardon Services. He was given a Certificate of Parole which outlined eleven Conditions of Supervision (signed and dated by Applicant, the Director of Parole Board Support, and a witness). On August 7, 2013, a warrant was issued for Applicant's arrest, alleging that Applicant violated Conditions 3, 7, 9, and 10 of his Parole. It was alleged that Applicant failed to follow advice and instructions of his agent by failing to pay fees, failing to refrain from

contacting his former employer Leigh Cotton and her family, failing to refrain from drinking alcohol to excess, and according to two Kershaw County arrest warrants Applicant struck two members of Ms. Cotton's family with a pole (charged with two counts of Assault and Battery Third Degree).

On August 20, 2013, Applicant was presented a Notice of Offender Rights at Hearing and Hearing Waiver Option from Parole Services. Applicant was notified his parole hearing date was set for August 27, 2013. The hearing took place at the Kershaw County Detention Center on August 27, 2013. Present at the hearing was the Administrative Officer, Applicant's parole agent, Applicant, and two agent's witnesses (Leigh Cotton and Paul Cotton, III). Applicant was found to have violated conditions 3, 7, 9, and 10, set forth in the Conditions of Supervision. Applicant's parole was revoked, and he was ordered to serve the remainder of his sentence. Applicant did not appeal his parole revocation.

Current PCR Application

Applicant subsequently filed his current and most recent Application for Post-Conviction Relief (PCR) on February 26, 2014. He raised the following grounds for relief in his PCR Application:

1. Applicant was denied the right to confront and question witnesses testifying against him that is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution and the South Carolina Department of Probation, Parole and Pardon Services . . . therefore, Due Process was violated;

2. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and corresponding provision of the South Carolina Constitution from unlawful arrest that was based on erroneous violation of allegations that have no factual support, therefore violation Due process;

3. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and the corresponding provisions of the South Carolina Constitution from unlawful arrest with an invalid arrest warrant that probable cause had never been established, and his sentence had expired.

SUMMARY OF THE TESTIMONY

Applicant testified he did not believe he was given due process during his parole hearing. He testified he was not allowed in the same room with the witnesses who addressed the parole board, and he was not given an attorney when he wanted one. Applicant also testified he was not allowed to address the parole board because they asked him direct questions and did not allow him to speak aside from those answers. Applicant claimed he had not violated any parole conditions. He stated he paid his fees when he was told he needed to pay them and was not behind in payment. However, Applicant did admit his parole officer expressly ordered him to have no contact, even by phone, with the victims of his alleged assault, and Applicant agreed that even after this direct order he still sent responsive text messages to the victims. Applicant agreed he had been arrested for assault charges against these victims, but Applicant noted the alleged assault occurred on his property after they came on to his property. Applicant also agreed he had been arrested for driving under the influence. Applicant claimed he had not been drinking, and he said he could not have alcohol because he suffered from Hepatitis C.

Applicant's parole officer, Agent Cook, confirmed Applicant was not allowed in the room with the witnesses when they addressed the parole board. The witnesses were victims of an assault by Applicant that had been documented by law enforcement. Agent Cook also agreed Applicant was not given an attorney because he was not entitled to one for a parole hearing. Agent Cook agreed Applicant was not allowed to speak freely aside from answering questions at

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the hearing and confirmed this was standard practice. Agent Cook testified Applicant violated more than one parole condition. Agent Cook instructed Applicant to stay away from the victims and have no contact, to include telephone contact. Agent Cook was able to get copies of text messages sent by Applicant to the victim after the date of her order not to have contact with them. Additionally, there was an incident report alleging Applicant had physically attacked victims. Agent Cook also explained Applicant had been forbidden from drinking alcohol while on parole; however, not only did he have an arrest for driving under the influence, but Agent Cook personally witnessed Applicant to be intoxicated and surrounded by empty beer cans when she had made a visit to his home. Agent Cook agreed she told Applicant he could pay his fees at the end of the month and not be considered late.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)).

A proceeding under the Uniform Post-Conviction Procedure Act may be instituted by: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his

sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." S.C. Code Ann. § 17-27-20.

In a parole context, Applicant has no Sixth Amendment right to counsel because "a parole revocation hearing . . . is an administrative rather than a criminal proceeding." Duckson v. State, 355 S.C. 596, 598, 586 S.E.2d 576, 578 (2003).

However, an inmate's non-collateral claim that his parole was unlawfully revoked falls squarely within the ambit of the PCR statute. Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). This does not, however, give the court the authority either to conduct a de novo review of the case or for this court to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680. The court's review of whether Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

As outlined in Morrissey v. Brewer, 408 U.S. 471, 480 (1972), "revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." The United Supreme Court outlined the limited "minimum requirements of due process."

> They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey v. Brewer, 408 U.S. at 488–89.

And while "the parolee may appear and speak in his own behalf [at the hearing, and] he may bring letters, documents, or individuals who can give relevant information to the hearing officer[,] . . . . if the hearing officer determines that an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination." Morrissey, 408 U.S. at 487.

Furthermore, where parole is revoked on more than one ground, Applicant must successfully challenge all grounds in order to vacate the revocation. See State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010) ("In this case, the Court of Appeals erred in addressing the merits of petitioner's argument regarding the revocation of probation based on a violation of Sex Offender Conditions *because the probation revocation judge revoked petitioner's probation on two additional grounds*, which petitioner did not challenge." (emphasis added)).

This Court will now address each allegation:

Allegation #1: Right to Confront Witnesses

Applicant argues his due process rights were violated when he was not allowed to confront the witnesses against him. There are no tapes or transcripts of the hearing; however, both Applicant and his parole agent agree he was not allowed to be in the same room with the victims. Parole agent does not remember if there was an express finding on the record that the informants would be at risk, but parole agent was aware the witnesses were victims of an assault allegedly perpetrated by Applicant. As outlined in Morrissey, where a hearing officer determines an "informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination."

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This Court finds that while it is unclear of whether there was a finding on the record of danger to the witnesses, there is testimony that the parole agent knew the witnesses had been allegedly subject to a physical attack by Applicant. And, more importantly, pursuant to Hicks, Applicant had his parole revoked **not only** for failing to follow orders and contacting these victims and the alleged assault on these victims, but also for consuming alcohol. Testimony at the hearing was that Agent Cook, who witnessed Applicant under the influence, was present at the hearing. Therefore, even if Applicant succeeded on one of his reasons for revocation, he would still be successfully revoked due to the allegations supported by Agent Cook.

Allegations #2 & 3: No Factual Support, No Probable Cause

Applicant next argues his rights were violated due to "unlawful arrest that was based on erroneous violation of allegations that have no factual support" and "unlawful arrest with an invalid arrest warrant that probable cause had never been established[.]"

Applicant is not entitled to a de novo review of the case or for this court to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680. The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

Further, this Court had the opportunity to observe and listen to sworn testimony from both Applicant and Agent Cook. Applicant admitted on the stand that he sent a text message to the victims after being ordered by Agent Cook not to do so, and Agent Cook testified to

personally observing Applicant under the influence of alcohol and surrounded in his home by empty beer cans.

For the reasons stated above, this Court finds Applicant has failed to meet his burden of proving his parole was unlawfully revoked and, accordingly, finds these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his parole hearing. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of July, 2017.

EUGENE C. GRIFFITH, JR.
Presiding Judge
Eleventh Judicial Circuit

Newberry, South Carolina.

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William Bruce Justice, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001718

Appeal From Lexington County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2022-UP-186
Submitted March 1, 2022 – Filed May 4, 2022

DISMISSED

Appellate Defender Taylor Davis Gilliam, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant Attorney General Lillian Loch Meadows, both of Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) action, William Bruce Justice challenges his parole revocation, arguing he was denied the right to confront and cross-examine witnesses at his parole revocation hearings, the right to disclosure of the State's evidence against him, and the right to be heard and to present evidence

on his behalf. Petitioner also contends S.C. Code Ann. § 24–21–50 (2007), which denies inmates the "right of confrontation" at a parole revocation hearing, violates due process. He further claims the parole board's hearing and pre-hearing practices and procedures deprive *pro se* inmates pertinent case information and discovery, and abridge the right to counsel because lawyers are "rarely" appointed for inmates. We dismiss the petition as moot.

I.

A jury convicted Petitioner in 1989 of four counts of second-degree burglary, two counts of grand larceny, and two counts of petit larceny. Petitioner was granted parole in 2012, at which time he had not yet completed service of three of his sentences for second-degree burglary. In 2013, Petitioner was arrested for violating his parole. After a preliminary and a final hearing, the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPS) revoked Petitioner's parole. In 2014, Petitioner filed this PCR application challenging his parole revocation. The PCR court found Petitioner failed to establish any constitutional violations or deprivations of due process. Petitioner then filed this petition for a writ of certiorari.

We granted the petition to review the questions presented by Petitioner. However, Petitioner has now been released from incarceration, having fully served his sentence. Petitioner argues even though he is no longer incarcerated, his issues are not moot as SCDPPS's conduct is likely to repeat itself and evade judicial review. We disagree.

Petitioner's issues are moot as he is no longer in prison. Any decision we could make as to the merits of his case would have no practical legal effect. *See Midland Guardian Co. v. Thacker*, 280 S.C. 563, 566, 314 S.E.2d 26, 28 (Ct. App. 1984) ("Before any action can be maintained, of course, there must exist a 'justiciable controversy.'" (quoting *Dantzler v. Callison*, 227 S.C. 317, 321, 88 S.E.2d 64, 66 (1955))); *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co*., 249 S.C. 561, 566, 155 S.E.2d 618, 621 (1967) ("A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character."); *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.").

Nor do any of Petitioner's issues fall under an exception to the mootness doctrine. While we agree the issues of denial of due process rights and treatment of *pro se* individuals in a parole revocation hearing may arise again, we do not agree they will evade future judicial review. *See S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017) (while an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review, "the action must be one which will truly evade review" (quoting *Sloan v. Friends of Hunley*, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006))). If in the future another inmate, who is still incarcerated, believes his parole has been unlawfully revoked and the parole board has denied him similar due process rights, that inmate may file a PCR petition, and a court will have the opportunity to rule on the issues at that time. *See Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999) (finding the legality of city-imposed conditions on a residential development moot, and although the scenario was capable of repetition, it did not evade review); *Sloan*, 369 S.C. at 27, 630 S.E.2d at 478 (although the situation was capable of repetition, it did not evade review because under the same or similar circumstances the court would have the opportunity to review the issue).

Nothing in the record indicates Petitioner's parole revocation holds future adverse collateral consequences for him. *Cf. State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) (finding in addition to Appellant's contempt sentence being too brief to appeal, Appellant's case was not moot because she could experience collateral consequences of the conviction such as having to disclose it on employment or credit applications, or when registering for a driver's license or to vote).

To be sure, the allegations Petitioner raises concerning due process issues related to the hearing and pre-hearing procedures and practices of the parole board (including the treatment of *pro se* inmates) are profoundly troubling. *See Duckson v. State*, 355 S.C. 596, 598–99, 586 S.E.2d 576, 578 (2003) (noting that because parole revocation is an administrative proceeding, there is no Sixth Amendment right to counsel but § 24–21–50 permits representation by counsel, and due process may afford such a right in some cases (citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973))). Nevertheless, the mootness doctrine does not allow us to address these issues in this case. Petitioner's application for PCR is therefore

DISMISSED.[1]

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

Opinion No. 2022-UP-186

WILLIAM BRUCE JUSTICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001718

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, William Bruce Justice requests that this Court grant rehearing based on the arguments set forth below.

William Justice was sentenced to four consecutive fifteen-year sentences in 1989. Despite a sixty-year aggregate sentence, the blatantly unconstitutional parole revocation procedures employed against him evaded judicial review. In concluding Justice's case is moot, this Court in the same breath suggested future parolees avail themselves of an identical process. Without either justification or explanation, this Court held that future victims of the exact same scam have a meaningful remedy, namely the same one that failed to secure relief for Justice.

Respectfully, this decision was erroneous. If Justice was unable to pursue his post-conviction relief ("PCR") appeal because he was no longer incarcerated, the indefensible, illegal parole revocation process will continue to take advantage of indigent individuals. This manifest injustice satisfies the mootness "capable of repetition, yet evading review" exception, and Justice requests rehearing.

The opinion issued by this Court is prima facie evidence of why parolees **do not** receive meaningful judicial review. Justice's case is a perfect illustration of how indigent individuals receive disparate treatment in South Carolina. This Court granted certiorari in the matter *sub judice*, yet instead of receiving appellate review of credible allegations of constitutional deprivations, complete with sworn testimony[1] that this exact situation will continue to occur, Justice's case was dismissed.

This Court's opinion that Justice's appeal was supposedly moot concluded "[w]hile we agree the issues of denial of due process rights and treatment of *pro se* individuals in a parole revocation hearing may arise again, we do not agree they will evade future judicial review." The crux of the matter, and the portion to which Justice strenuously objects, is the following:

> If in the future another inmate, who is still incarcerated, believes his parole has been unlawfully revoked and the parole board has denied him similar due process rights, that inmate may file a PCR petition, and a court will have the opportunity to rule on the issues at this time.

Justice v. State, Op. No. 2022-UP-186 (S.C. Ct. App. filed May 4, 2022) (internal citations omitted).

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1 As stated in the Reply Brief of Petitioner, "Nikita Cook's testimony at Mr. Justice's PCR hearing is an unequivocal roadmap of why this case is capable of near-certain repetition." RBOP p. 8; see generally App. 322 – 335 (testimony of Agent Cook admitting the occurrences in Justice's case are standard operating practices).

This conclusion adopts the flawed and nearsighted position offered by the state: "Any inmate who claims they 'should not have been returned to prison' on the basis their parole has been unlawfully revoked may file a PCR action under section 17-27-20(a)(5)." Amended Brief of Respondent p. 9.

This conclusion keeps functioning the revolving door of abuse of the very same system that trampled on Justice. In a hypothetical scenario mirroring Justice's case save for the fact that an individual is still incarcerated, the inmate could file a PCR application following the glaringly improper revocation procedures that resulted in him being re-incarcerated. If his parole was revoked and the remaining sentence was less than three years, the PCR process would not allow for judicial review, as evidenced by the procedural history in the matter at bar. If the hypothetical inmate was released within three years, his case would be moot under this Court's reasoning and the timelines experienced by Justice. App. 317 ll. 5 – 12.

Justice filed his PCR application on February 26, 2014. The state's return was filed fifteen months later.[2] The PCR evidentiary hearing did not occur until *three years* after Justice's PCR application was filed. In the hypothetical situation described above, an inmate could have his parole revoked and be required to serve two-and-a-half years' incarceration. In that instance, the state would undoubtedly move to dismiss the PCR action as moot at the time of the evidentiary hearing. A published opinion is needed to curb the deliberate, intentional exploitation of indigent individuals in South Carolina and to align our state with longstanding federal laws as discussed in the Brief of Petitioner and Reply Brief of Petitioner.

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2 This significant delay far exceeded the thirty days provided by the PCR statutes but is not an uncommon timeframe for the state's response in PCR actions. S.C. Code Ann. § 17-27-70(a) ("Within thirty days after the docketing of the application … the State shall respond by answer or by motion which may be supported by affidavits.").

Consider, in the alternative, this hypothetical individual's appeal. Assuming *arguendo*, that the individual remains incarcerated, as Justice was, following the denial of post-conviction relief. After a notice of appeal, petition for writ of certiorari, and return are filed with the South Carolina Supreme Court, the PCR appeal can be transferred to this Court. This Court could grant certiorari, direct further briefing, and schedule oral argument. If, however, the period of incarceration ends at *any point during the entire PCR appeal*, the individual's case could be dismissed for mootness based on this Court's current rationale.[3] Such a practice relegates this Court's authority to the PCR court while simultaneously forbidding meaningful appellate review of a PCR court's decision. In the event the individual is still incarcerated, the parole board could *grant parole a second time the day before oral argument*, thereby requiring dismissal based upon this Court's current rationale. This reasoning invites mischief and was the subject of a recent opinion from the Supreme Court of Minnesota:

> The Department [of Corrections] responds that the duration of the challenged activity must, "by its very nature," be too short to be fully litigated. The exception does not apply, says the Department, because the term of an offender's re-incarceration is not, "by its very nature," too short a period to litigate a habeas corpus proceeding. The Department undermines its own position. If the re-incarceration term is subject to the Department's broad discretion, then the term, "by its very nature," **could always be shortened by the Department to moot an offender's habeas corpus petition**.
>
> Based on this analysis, we hold that the issues Young raises are capable of repetition yet likely to evade review. Accordingly, we will not dismiss this appeal as moot.

State ex rel. Young v. Schnell, 956 N.W.2d 652, 663 (Minn. 2021) (emphasis added and internal citation omitted).

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[3] See Stephenson v. Campbell, No. 2:06-CV-01929-NRS, 2009 WL 426026, at *1 (E.D. Cal. Feb. 19, 2009) (dismissing as moot an inmate's appeal after parole was granted a second time); see also Robledo-Valdez v. Trani, No. 12-CV-02203-WYD, 2013 WL 3216093, at *1 (D. Colo. June 25, 2013) (same).

A parole agent, as in Justice's case, could refuse to recognize longstanding and unambiguous precedent from the Supreme Court of the United States of America and thereby egregiously violate a parolee's constitutional rights. Without appellate review, there exists no avenue to correct the PCR court's erroneous findings. Such a system breeds contempt of the law. This Court's opinion in its current form abdicates its responsibility to the PCR court, effectively forcing PCR applicants to live with the decision of a single PCR judge. Stated differently, this Court suggests that the determination made by the PCR judge is the only review necessary. Such a decision provides the South Carolina Department of Probation, Parole and Pardon Services ("SCDPPPS") carte blanche to invalidate well-established constitutional rights simply because most inmates who have had their parole revoked will likely "max out" their sentence before appellate review is complete.

Mootness: capable of repetition but evading judicial review exception

An opinion from 1895 is generally understood to be the first United States Supreme Court decision directly addressing the mootness doctrine. Mills v. Green, 159 U.S. 651 (1895). Interestingly, Mills involved the election of delegates to a convention to revise South Carolina's constitution. Id. at 652. A South Carolina citizen filed suit, claiming the state's voter registration statutes unconstitutionally "abridge[ed], imped[ed], and destroy[ed] the suffrage of citizens of the state and of the United States." Id. at 651-52. While the case was pending on appeal, the date of the delegate election for the convention passed, the delegates were selected, and the constitutional convention had assembled. Therefore, the Court held that "the whole object of the [plaintiff's lawsuit] was to secure a right to vote at the election." Id. at 657. The matter was therefore dismissed.

Since then, however, the Supreme Court has generally *declined to deem cases moot* that present issues or disputes that are "capable of repetition, yet evading review."[4] The classic example of a dispute that is capable of repetition, yet evading review is a pregnant woman's constitutional challenge to an abortion regulation. See Roe v. Wade, 410 U.S. 113, 125 (1973) (quoting S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911)). Once a woman gives birth, abortion is no longer an option for terminating that particular pregnancy. However, almost any litigation of significance—especially if it involves an appeal—can rarely be fully resolved in a mere nine months. If a challenge to an abortion regulation became moot as soon as the challenger gave birth, "pregnancy litigation seldom w[ould] survive much beyond the trial stage, and appellate review w[ould] be effectively denied." Id.

The Supreme Court has deemed certain other controversies outside of the abortion context as capable of repetition, yet evading review as well. For example, in Federal Election Commission v. Wisconsin Right to Life, Inc., an advocacy organization claimed that restrictions on "electioneering communications" established by the Campaign Reform Act of 2002 unconstitutionally prohibited the organization from broadcasting certain political advertisements

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4 See, e.g., Kingdomware Techs., Inc. v. United States, 136 S.Ct. 1969, 1976 (2016); Turner v. Rogers, 564 U.S. 431, 439-41 (2011); Davis v. FEC, 554 U.S. 724, 735-36 (2008); FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 462 (2007); Norman v. Reed, 502 U.S. 279, 287-88 (1992); Int'l Org. of Masters, Mates & Pilots v. Brown, 498 U.S. 466, 472 (1991); Meyer v. Grant, 486 U.S. 414, 417 n.2 (1988); Honig v. Doe, 484 U.S. 305, 317-23 (1988); Burlington N. R.R. Co. v. Bhd. Of Maint. Of Way Emps., 481 U.S. 429, 436 n.4 (1987); Brock v. Roadway Express, Inc., 481 U.S. 252, 257-78 (1987); Press-Enter. Co. v. Super. Ct. of Cal. for Cty. Of Riverside, 478 U.S. 1, 6 (1986); Globe Newspaper Co. v. Super. Ct. for Cty. of Norfolk, 457 U.S. 596, 603 (1982); Democratic Party of U.S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 115 n.13 (1981); Gannett Co. v. DePasquale, 442 U.S. 368, 377 (1979); Bell v. Wolfish, 441 U.S. 520, 526 n.5 (1979); First Nat'l Bank of Bos. V. Bellotti, 435 U.S. 765, 774 (1978); United States v. N.Y. Tel. Co., 434 U.S. 159, 165 n.6 (1977); Neb. Press Ass'n v. Stuart, 427 U.S. 539, 546-47 (1976); Gerstein v. Pugh, 420 U.S. 103, 110 n.11 (1975); Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 125-27 (1974); Storer v. Brown, 415 U.S. 724, 737 n.8 (1974); Dunn v. Blumstein, 405 U.S. 330, 333 n.2 (1972); S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 514-16 (1911).

shortly before the 2004 election. 551 U.S. 449, 457-60 (2007). Even though the case did not reach the Supreme Court until long after the 2004 election had passed, the Court nonetheless concluded that the case was not moot. Id. at 462-64. The Court reasoned that the organization "credibly claimed that it planned on running 'materially similar' future targeted broadcast ads" in advance of future elections, and the period between elections was too short to allow the organization sufficient time to fully litigate its constitutional challenges sufficiently in advance of the election date. Id.; see also Davis v. FEC, 554 U.S. 724, 735-36 (2008) (rejecting mootness challenge in case whose facts "closely resemble[d]" those at issue in Wisconsin Right to Life).

Justice's case contains a similar admission regarding future conduct. Nikita Cook, the parole agent who assisted the state in its deployment of unconstitutional parole revocation practices against Justice, testified at length about how Justice's case is like any other:

> Q: So you have the hearing officer and you're present at that meeting and did you present witnesses to support the different violations?
>
> A: I don't recall. Uhm, I think I may have had statements from him and I do remember a printout as he said from a cell phone.
>
> Q: **Would you have shown any of that information to the applicant?**
>
> A: **Uhm, probably not because usually they go out and hire an attorney and you give all that information to the attorney.**
>
> Q: Okay. In this instance he elected not to hire an attorney?
>
> A: Correct. Uhm, when you're actually read your rights to go to a hearing, it basically states that you will have the right to hire an attorney. An attorney will not be appointed except in the most extraordinary circumstances.[5]

App. 322 l. 24 – App. 323 l. 15 (emphasis added).

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5 Cook testified she has never, in her entire career, seen a parole examiner appoint counsel to represent an indigent recovee. App. 332 ll. 13 – 23.

However, even when an attorney is present, an alleged revocee is not afforded the minimum due process rights enshrined in decades-old United State Supreme Court precedent,[6] according to Cook. App. 327 ll. 7 – 18. Further, "standard procedure" as described by Cook required non-compliance with the law:

> Q: Did Mr. Justice get a copy of that packet [that was given to the parole board prior to the hearing]?
>
> A: No.
>
> Q: Why not?
>
> A: Because he's not an attorney.
>
> Q: So if he was representing himself, would you not have been able to give him the packet?
>
> A: **It's not standard procedure to**.

App. 334 l. 22 – App. 335 l. 3 (emphasis added).

The admission from a parole agent employed by the State of South Carolina unambiguously defies federal jurisprudence. Thus, "standard procedures" utilized by the state will continue to be illegally weaponized against indigent revocees; it has become the state's official protocol at this point.

The Court of Appeals of Wisconsin has wrestled with this exact situation. State ex rel Olson v. Litscher, 233 Wis.2d 685, 608 N.W.2d 425 (2000). Olson was imprisoned for sexual assault and reached his mandatory release date on or about March 2, 1999. 608 N.W.2d at 426. Because the state department of corrections was unable to locate a residency for Olson, he was transferred to a minimum-security penal institution. Id. at 426-27. Olson petitioned the circuit court for a writ of habeas corpus, contending that his continued incarceration past his statutorily

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6 Gagnon v. Scarpelli, 411 U.S. 778 (1973).

mandated release date was an unlawful restraint of his personal liberty. Id. at 427. While the case was pending, Olson was released. Id. The state then moved to dismiss the petition as moot. Id.

Wisconsin applies a narrower mootness exception than South Carolina: the issue must be "likely of repetition and yet evades review."[7] South Carolina, by comparison, simply requires that a situation only be *capable* of repetition. Applying Wisconsin's more stringent standard, its Court of Appeals nonetheless applied the rationale Justice requests in the matter at bar:

> To begin with, we note that with the recent passage of "Truth in Sentencing," ... this issue will cease to arise as mandatory release on parole for felony offenders will be a thing of the past. But a similar situation could conceivable occur under the "Truth in Sentencing" legislation because of the new requirement that felony sentences be bifurcated to include both confinement and extended supervision. Currently, offenders for whom a suitable residence has not been found are incarcerated beyond their mandatory release dates. **Not only does the problem recur, it is typically resolved pending appellate review. The question is thus one that repeats itself yet evades review. Additionally, it deals with the unlawful restraint of personal liberty—a constitutional question.** For these reasons, we decline to dismiss this case as moot, even though Olson has been released and our decision will have no practical effect on this case.

State ex rel. Olson v. Litscher, 608 N.W.2d 425, 427 (emphasis added and internal citations omitted).

South Carolina courts recognize the "capable of repetition, yet evade review" exception. Byrd v. Irmo High School, 321 S.C. 426, 431-32, 468 S.E.2d 861, 864 (1996). However, for the exception to apply, "the action must be one which will truly evade review." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). The exception is most applicable in situations where the prejudice suffered by the complaining party is temporary and has ended by the time of appellate review. See Byrd, 321 S.C. at 432, 468 S.E.2d at 864 (finding short-term

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[7] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis.2d 220, 229, 340 N.W.2d 460 (1983).

student suspensions evade review because they are, "by their very nature, completed long before **an appellate court** can review the issues they implicate") (emphasis added).

In Byrd, a student from Lexington-Richland School District 5 was suspended for ten days after coming onto campus after having consumed alcohol. Id. at 321 S.C. 426, 429 468 S.E.2d 861, 863. After exhausting his appeals through the district's policies, the family engaged counsel who filed suit at the circuit court.[8] Id. at 429-30, 468 S.E.2d at 863. Following the circuit court's dismissal under Rule 12(b)(1) and 12(b)(6), SCRCP, the student sought an appeal, alleging three grounds of error against the circuit court. Id.

After the notice of appeal was filed, Irmo High School moved to dismiss the case as moot. Id. "It assert[ed] that Student's suspension occurred in August and September 1994, that Student has since returned to school, and that the suspension has been cleared from Student's record." Id. at 430, 468 S.E.2d at 863-64. The Byrd opinion was issued approximately eighteen months after the suspension, yet our Supreme Court declined to apply the mootness doctrine and instead found the "capable of repetition, yet evading review" exception applicable.

The Court held that the student's case was not moot because future suspensions could be concluded before *appellate judicial review* could be accomplished:

> Applying this standard, we find that even if it is assumed that the issue in the present case is moot, it is an issue that is capable of repetition, but which will evade review. Short-term student suspensions, by their very nature, **are completed long before an appellate court can review the issues they implicate.** Therefore, we conclude that the present case clearly fits into the evading review exception of the mootness doctrine, even if it were not otherwise appropriate for the Court to address this appeal.

Id. at 432, 468 S.E.2d at 864 (emphasis added).

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8 The student also petitioned the Supreme Court for supersedeas, which was denied. Id. at 430, 468 S.E.2d at 863.

Being sent to prison is far more serious than having to stay home from school. Justice's case nonetheless closely resembles the above scenario such that an identical approach should be applied. All of the situations involve circumstances that exist for a short, fixed time period and may be concluded by the time litigation reaches a court. Because the issue may arise again and will almost always face timing challenges, cases like this one should not be dismissed for mootness. The short-term nature of the re-incarceration has the potential for recurrence but will likely fail to last long enough to permit contemporaneous judicial review.

Further precedent from this Court also supports Justice. In State v. Passmore, the appellant received a one-year sentence for criminal contempt. 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005). On appeal to this Court, she alleged a constitutional violation based upon the lack of a jury trial. Id. Although she was no longer incarcerated at the time this Court's opinion was issued, this Could held the issue was **not moot**. Id.

Much like the matter *sub judice*, the state contended in Passmore "that even if Appellant's sentence was unconstitutional, [this Court] should affirm because she has served the sentence, rendering the case moot." Id. at 581, 611 S.E.2d at 280. This Court cited Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001) for the three primary exceptions to the mootness doctrine, including the capable of repetition but evading review exemption. Id. at 582, 611 S.E.2d at 280. This Court found the "capable of repetition yet evading review" exception and another applicable and therefore refused to dismiss Passmore's appeal as moot. Id. at 582, 611 S.E.2d at 281.

Applying a similar rationale as discussed above, this Court held:

> [T]he State concedes in its brief: "the sentence was in fact too brief to be fully litigated through appeal prior to its expiration..." The issue, then, is whether the constitutional violation suffered by Appellant could be inflicted on a contemnor in the future. **That the unconstitutional sentence was imposed here is evidence enough a judge could make the same error in the future.**

Id. at 582, 611 S.E.2d at 281 (emphasis added).

In this Court's opinion in the instant case, reference was made to Passmore only to the extent that she suffered collateral consequences following a conviction. In doing so, this Court overlooked the portion of Passmore described herein, namely that unconstitutional actions are indisputable evidence that the same conduct is capable of reoccurring. Without a decision from this Court, future parolees will continue to be illegally incarcerated.

Prison sentences and parole in South Carolina

Justice was serving a sixty-year sentence and his case was held moot because of South Carolina's sentencing scheme. It will be the rare defendant who receives a parole-eligible sentence that exceeds Justice's. Our structure of prison sentences is therefore ripe for abuse, where parole is generally available only in cases where the *maximum* sentence is fifteen years.[9] S.C. Code Ann. § 24-13-100. Therefore, an inmate who was eligible for parole, received it, and had it revoked then has a limited number of years remaining on his or her sentence. As a result, judicial review will not likely occur before an individual is released. Repeated constitutional violations are all but guaranteed.

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9 Buchanan, Matthew, S.C. Department of Probation, Parole and Pardon Services, p. 10, https://sccid.sc.gov/resource_bank/uploads/conferences-and-cles/2020-annual-public-defender-conference-092020/Buchanan_DPPP-Update_PDCon2020.pdf (last accessed May 11, 2022).

There exist three categories of adult sentences served at the South Carolina Department of Corrections: 1) parolable sentences; 2) no parole or 85% sentences; and 3) day for day or "mandatory minimum" sentences. The first category is relevant to this matter. Individuals serving parolable sentences earn the most amount of good time and work/education credits—twenty days of good time and an average of work/education credits per month. According to materials provided by SCDC's general counsel, these offenders, on average, serve between 53% and 65% of their sentences.[10] This calculation entails consideration of good time credit under S.C. Code Ann. § 24-13-210 and earned work and education credits under S.C. Code Ann. § 24-13-230. Parole was available to Justice after serving one-third of his sentence, according to the burglary second degree statute:

> Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence.

S.C. Code Ann. §16-11-312(C)(2).

In Mims v. State, our Supreme Court held that for purposes of parole eligibility, consecutive sentences should be treated as one general sentence by aggregating the periods imposed in each sentence. 273 S.C. 740, 259 S.E.2d 602 (1979). Even with a sixty-year sentence, Justice's case was deemed to be moot by this Court. A typical case would see the same result based on this Court's current opinion. Defendants sentenced for a single burglary in the second degree would fare no better following our "standard" unlawful revocation procedure. A defendant serving the maximum fifteen-year sentence would be parole eligible after one-third, or

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10 Bigelow, Christina Understanding Prison Sentences p. 4, https://sccid.sc.gov/resource_bank/uploads/conferences-and-cles/2021-annual-public-defender-conference-092021/Bigelow_Understanding-Prison-Sentences_PDCON21.pdf (last accessed May 9, 2022).

five years. Assuming parole is granted as early as possible following the maximum sentence, the difference between parole eligibility (five years) and the 53% described above (approximately eight years) is only three years. Therefore, an individual who was subject to tainted revocation procedures, as Justice was, would likely not even receive a PCR evidentiary hearing by the time he or she "maxed out" the sentence, because the state would move to dismiss the action as moot three years after the filing of the action. In other words, an individual would need to be sentenced to *more than sixty years* for parole eligible, non-violent offenses in order to receive judicial review. If Justice's case evades judicial review, almost every single every other case does too.

The opinion this Court issued in Justice's case suggests a future inmate "may file a PCR petition, and a court will have the opportunity to rule on the issues at that time." However, between the significant delays facing PCR applicants[11] as they seek finality through the judicial process, it is unlikely that said future parolee who received a combination of consecutive parole-eligible non-violent offenses totaling less than sixty aggregate years will receive judicial review before the brief period of re-incarceration following revocation concludes. As such, this case falls squarely within the "capable of repetition, yet evading judicial review" exception to the mootness doctrine. The theory of mootness must give way to the realities of these delays. The exception to the mootness doctrine recognizes this real-world problem. This Court erred in passing on real-world constitutional violations.

Justice was deprived of numerous due process rights under the auspices of "standard procedure" for the South Carolina Department of Probation, Pardon and Parole Services. The brutally candid testimony of Nikita Cook illustrates how future revocees will lose their freedom

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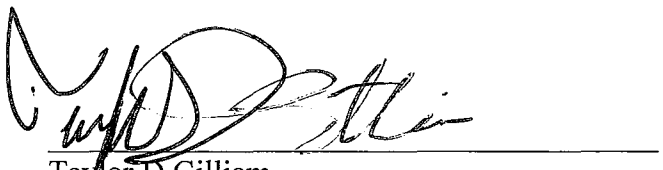
11 Justice filed his PCR application on or about February 26, 2014. This Court's opinion was issued on May 4, 2022, over eight years later.

without being able to exercise their constitutional rights. The flagrant constitutional violations will continue to infect the parole revocation process until an appellate court holds the state responsible. Justice now requires that this Court exercise its judicial authority to prevent indigent citizens from facing identical, fundamentally unfair, and unconstitutional treatment at the hands of the government and its "standard procedure."



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

This 19th day of May, 2022.

The South Carolina Court of Appeals

William Bruce Justice, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001718

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

cc:
Taylor Davis Gilliam, Esquire
Lillian Loch Meadows, Esquire
The Honorable Eugene C. Griffith, Jr.

FILED
Nov 03 2022

THE STATE OF SOUTH CAROLINA
In The Supreme Court

William Bruce Justice, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-001680

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Lexington County
Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 28183
Submitted September 13, 2023 – Filed December 13, 2023

AFFIRMED

Appellate Defender Lara Mary Caudy and Pro Bono Program Director, Taylor Davis Gilliam, both of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant Attorney General Donald J. Zelenka and Matthew C. Buchanan, all of Columbia, for Respondent. Matthew A. Abee and Yasmeen Ebbini, of Nelson, Mullins, Riley &

Scarborough, LLP, of Columbia, for Root and Rebound, Amicus Curiae.

PER CURIAM: Petitioner was convicted in 1989 of multiple counts of second-degree burglary, grand larceny, and petit larceny, for which he was sentenced to a total of sixty years in prison. Petitioner was paroled in 2012. In 2013, Petitioner was arrested for violating the terms of his parole. His parole was revoked following a hearing, and he was ordered to serve the remainder of his sentence.

In 2014, Petitioner brought this post-conviction relief action ("PCR") challenging the revocation of his parole on the basis he was not afforded the minimal requirements of due process. Among his allegations, Petitioner asserted he was denied the right to confront adverse witnesses at the parole revocation hearing because he was made to leave the room during the testimony of an adverse witness, without explanation and without a finding by the hearing officer of the necessity for his removal; he was not permitted to question any adverse witnesses; and he was not permitted a reasonable opportunity to present his side of the case because the hearing officer abruptly cut off his testimony after a few minutes and stated that he had "enough information," but then proceeded to hear the testimony of an adverse witness in Petitioner's absence.[1] The PCR judge issued an order denying Petitioner's application for relief, finding Petitioner failed to prove the existence of any constitutional violations or deprivations.

Petitioner appealed, and the court of appeals dismissed the appeal as moot because Petitioner was released from prison while his appeal was pending. *See Justice v. State*, Op. No. 2022-UP-186 (S.C. Ct. App. filed May 4, 2022) (dismissing the appeal without oral argument). This Court granted a petition for a writ of certiorari from Petitioner to review the decision of the court of appeals. After carefully reviewing the record, we affirm the determination of the court of appeals that the appeal is moot and that Petitioner has not established any exceptions to mootness are applicable in this case. However, we are gravely concerned by Petitioner's allegations and his assertion that these are the standard operating

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[1] A recording of the parole revocation hearing has been filed as an exhibit with this Court. It indicates the hearing lasted about ten minutes.

procedures in parole revocation matters. Accordingly, we look forward to the opportunity to consider a case that is not moot and that properly places these issues before the Court.

AFFIRMED.

BEATTY, C.J., KITTREDGE, FEW, JAMES, JJ., and Acting Justice Letitia H. Verdin, concur.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 7, 2024

Mr. Taylor Gilliam
University of South Carolina School of Law
1525 Senate Street
Pro Bono Program: Room 386
Columbia, SC 29201

Re: William Bruce Justice
v. South Carolina
Application No. 23A821

Dear Mr. Gilliam:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on March 7, 2024, extended the time to and including April 11, 2024.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst